

**IN THE SUPREME COURT  
STATE OF MISSOURI**

**IN RE:**

**EDWARD LANDER,**

**Respondent.**

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**Supreme Court #SC95263**

**INFORMANT'S BRIEF**

Respectfully submitted,

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### **STATEMENT OF JURISDICTION**

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo. 2000.

## STATEMENT OF FACTS

### I. Background and Disciplinary History

Edward Lander, Respondent, was licensed to practice law in Missouri in 1961. **App. 13.** He currently practices from his home located at 185 Ladue Pines Drive, St. Louis, Missouri. **App. 13.** Respondent's practice consists of general personal injury, traffic, and litigation matters. **App. 35.** Respondent maintains his Interest on Lawyers Trust Account ("IOLTA" or "trust account") at BMO Harris Bank. **App. 13.**

This disciplinary action consists of four (4) allegations of professional misconduct involving Respondent's handling of his IOLTA. **App. 160.** Since 2010, the Office of Chief Disciplinary Counsel ("OCDC" or "Informant") has received four (4) separate overdraft notices concerning Respondent's IOLTA. **App. 160.** The first three overdraft notices occurred in 2010, 2012 and 2013 and resulted in investigative audits conducted by Kelly Dillon, the Informant's paralegal and certified fraud examiner. The investigative audits reflected (i) the "inadvertent use" of Respondent's trust account for the payment of personal expenses, and (ii) that there was no client harm that resulted from Respondent's misuse of his trust account. **App. 163.**

Informant initially cautioned Respondent for the misuse of this trust account and ultimately admonished Respondent. **App. 64; 133-138.** The OCDC also directed Respondent to review the 2013 amendments of the trust account rules, to review and analyze the corresponding Missouri Bar/IOLTA Accounting Manual, and to attend a related continuing legal education seminar regarding the basics of trust accounting. **App. 44, 134,**

**136 and 163.** Specifically, each communication from Informant to Respondent contained recommendations, instructions, warnings and referrals to Supreme Court Rule 4-1.15, et seq. Respondent was instructed to maintain adequate trust account records, to make timely deposits into the trust account, to remove personal funds from the trust account to avoid commingling and to cooperate with Informant's requests for information. **App. 136-138.** He was instructed to attend a specific continuing legal education course on trust accounting procedures and was provided with a brochure for that course. **App. 140.** Respondent failed to comply with Informant's directives.

Notwithstanding Respondent's failure to act, Informant continued in its efforts to educate Respondent and to provide him with an opportunity to comply with the safekeeping property rules. **App. 134, 136, 138.** Respondent testified that after years of communications with Informant's investigator, he still had not read the rules on how to properly handle his trust account and that he had still not attended a CLE regarding trust accounting. **App. 105.**

An additional overdraft notification was received by the OCDC in May 9, 2014 and resulted in issuance of an Information. A full evidentiary hearing was held before the Disciplinary Hearing Panel (the "Panel") on June 2, 2015, in St. Louis, Missouri. **App. 28, App. 44, 134, 136 and 163.**

The Information filed against Respondent on December 24, 2014 alleged that Respondent's IOLTA was once again overdrawn and due to violations of the Rules of Professional Conduct. **App. 13.** The overdraft notification prompted a detailed and thorough investigation of Respondent's trust account that revealed that on April 1, 2014,

Respondent's IOLTA contained a balance of \$339.23, presumably personal funds because no client matter was pending. **App. 14.** On April 29, 2014, two checks were deposited into the trust account by Respondent. **Id.** The checks were payable to Respondent and Michael and Zhanna Inekovich (the "Inekoviches") for \$7,250 and \$6,350. **App. 148.** The deposit was later returned (on May 2, 2014) for Respondent's failure to endorse the two checks. **App. 81.** The return resulted in an overdraft because Respondent had already withdrawn \$1,500 from the trust account. **Id.** Although the checks were re-deposited, Respondent made additional withdrawals on his trust account as follows:

- |      |              |                                      |
|------|--------------|--------------------------------------|
| i.   | May 21, 2014 | \$500.00 (payable to M. Rothman)     |
| ii.  | May 21, 2014 | \$74.00 (payable to the Inekoviches) |
| iii. | May 27, 2014 | \$138.00 (payable to All Purpose)    |
| iv.  | May 28, 2014 | \$36.00 (payable to the Inekoviches) |
| v.   | May 28, 2014 | \$59.42 (payable to Mercy Hospital)  |

**App. 148.**

When asked to provide an explanation for these withdrawals, Respondent could not do so because he had no records supporting the basis and reasons for the withdrawals. **App. 26; 52; 55; 90; 103.** Moreover, Respondent's Settlement Statement for the Inekoviches' matter, dated April 28, 2014, indicated that a certain Dr. Brust was owed \$4,606. **App. 89.** The Settlement Statement further indicated that Respondent's attorney's fees totaled \$4,534 for the matter. **App. 57.** Although Respondent is unaware of whether Dr. Brust was paid the \$4,606, he admitted that had Dr. Brust and the attorney's fees been paid, the trust account would have been overdrawn by \$2,244.19. **App. 91.** A detailed review of

Respondent's BMO Harris Bank statements revealed that additional payments were paid from the trust account that appear to be personal expenses, including payment to Mike Lander, Respondent's son. **App. 79; 93.**

A. Respondent's Response and Failure to Cooperate

In his Answer, filed on January 15, 2015, Respondent admitted many of the allegations contained in the Information, including that personal funds were on deposit in his trust account, that his trust account had been overdrawn, and that had legal fees and expenses been paid from the account, there would have been a significant resultant shortage of funds. **App. 21.** Respondent never attended any CLE presentations on trust accounting. **App. 105.** Most alarming, Respondent admits that he never read the Rules of Professional Conduct, not even Rule 4-1.15, which was repeatedly cited to Respondent during each of the initial three overdraft investigations. **App. 104.** During Informant's investigation, Dillon contacted Respondent on multiple occasions in order to obtain factual information and documents regarding Respondent's trust account. **App. 85.** Respondent was uncooperative, often hanging up on Ms. Dillon during telephone conversations and objecting to the disclosure of the information. **App. 85.** Additionally, Respondent was twice served with a subpoena for a deposition scheduled first for October 20 and then for November 20, 2014. **App. 151; App. 153.** He failed to appear for either deposition. **App. 131.** While testifying at the hearing, Respondent acknowledged that he was guilty of something, but that it was "negligence at worse." **App. 99.**

In light of the facts revealed during the investigation, the Information alleged that Respondent violated Rule 4-1.15(a) by commingling his personal funds with the client's



funds in his trust account and by making withdrawals by means other than a check payable to a named payee; Rule 4-1.15(d) by failing to promptly deliver funds to the client or third parties; Rule 4-1.15(f) by failing to maintain complete records of his trust account; Rule 4-8.4(c) by engaging in conduct involving dishonesty and fraud; and Rule 4-8.1(c) for knowingly failing to respond to a lawful demand for information from an admissions or disciplinary authority. **App. 15.**

### **Disciplinary Panel Decision**

The hearing was held on June 2, 2015. **App. 28.** The Panel rendered its decision on July 23, 2015. **App. 160.** The decision concluded that Respondent violated Rule 4-1.15(a) by commingling personal funds in his IOLTA and by withdrawing funds from the trust account by means other than those allowed by the Ethics Rules (**App. 164**); that Respondent violated Rule 4-1.15(d) by failing to promptly deliver funds from the trust account to clients or third parties (**App. 164**); that Respondent violated Rule 4-1.15(f) by failing to maintain complete records of his trust account and being unable to explain certain transactions therein (**Id.**); that Respondent violated Rule 4-8.1(c) by failing to adequately respond to requests for information from the OCDC and by his behavior regarding inquiries from Ms. Dillon. **App. 164.** The Respondent was not found to have engaged in dishonest or fraudulent conduct in violation of Rule 4-8.4(c). In light of these findings, the Panel recommended that Respondent be suspended indefinitely, with no leave to apply for reinstatement until after six months. **App. 164.** Respondent timely rejected the Panel decision.

**POINT RELIED ON**

**THIS COURT'S PRIOR DISCIPLINARY DECISIONS AND THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUPPORT AN INDEFINITE SUSPENSION OF RESPONDENT'S LICENSE BASED UPON THE PRESENCE OF MULTIPLE VIOLATIONS OF THE SAFEKEEPING PROPERTY RULES AS WELL AS RESPONDENT'S FAILURE TO COOPERATE IN THE INFORMANT'S INVESTIGATION OF HIS MISCONDUCT.**

*In re Crews*, 159 S.W. 3d 355 (Mo. banc 2005)

*In re Coleman*, 295 S.W.3d 857 (Mo. banc 2009)

*In re Farris*, 2015 WL 5240375 (Mo. banc 2015)

ABA Standards for Imposing Lawyer Sanction (1992)

Rule 4-1.15

Rule 4-8.1(c)

## ARGUMENT

**THIS COURT’S PRIOR DISCIPLINARY DECISIONS AND THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUPPORT AN INDEFINITE SUSPENSION OF RESPONDENT’S LICENSE BASED UPON THE PRESENCE OF MULTIPLE VIOLATIONS OF THE SAFEKEEPING PROPERTY RULES AS WELL AS RESPONDENT’S FAILURE TO COOPERATE IN THE INFORMANT’S INVESTIGATION OF HIS MISCONDUCT.**

### Violations

Violations of Rules 4-1.15 [safekeeping property] and 4-8.1(c) [failing to cooperate with the disciplinary authority] are established by Respondent’s Answer to the Information and Respondent’s testimony before the Panel. The Panel found that Respondent’s conduct violated both of these rules.

The Panel also found, however, that the record evidence did not support the charge that Respondent’s conduct was dishonest in violation of Rule 4-8.4(c). Informant respectfully disagrees with the Panel’s conclusion. As discussed below, it is established that Respondent acted knowingly in using client or third party funds for his own personal purposes. Respondent thereby misappropriated client or third party funds. His conduct violated Rule 4-8.4(c).

### Sanction

“The fundamental purpose of an attorney disciplinary proceeding is to protect the public and maintain the integrity of the legal profession.” *In re Crews*, 159 S.W. 3d 355,

360 (Mo. banc 2005). When determining the appropriate sanction for attorney misconduct, the Court relies on several sources. The Court considers the American Bar Association (“ABA”) Standards for Imposing Lawyer Sanctions to help achieve the goals of attorney discipline. *In re Coleman*, 295 S.W.3d 857 (Mo. banc 2009). In assessing the appropriate disciplinary sanction, the Court further considers its own decisions in attorney discipline cases to ensure for fairness and consistency. Finally, the Court considers aggravating and mitigating factors relevant to the Respondent’s actions, the Respondent’s testimony, the Disciplinary Hearing Panel’s recommendation, and applicable rules.

Pursuant to the ABA Standards, suspension is an appropriate sanction (a) in matters involving the failure to preserve client’s property, when a lawyer knows or should have known that he or she is dealing improperly with client property and causes injury or potential injury to a client (Section 4.12 of the ABA Standards), and (b) when a lawyer engages in conduct that is in violation of a duty owed to the profession and causes injury or potential injury to a client, the public or the legal system (Section 7.2 of the ABA Standards). Respondent’s misuse of his trust account is consistent with these standards.

Respondent admits that he violated his duties by commingling his personal funds with the client’s funds in his trust account and by withdrawing funds from the trust account by means other than those authorized by the Ethics Rules (Rule 4.1.15(a)), by failing to promptly deliver funds to the client or third parties (Rule 4-1.15(d)) by failing to maintain complete records of his trust account and being unable to explain certain transactions therein (Rule 4.1.15(f)), and by failing to adequately respond to requests for information from the ODCD (Rule 4-8.1(c)). **App. 161.** Respondent’s conduct demonstrated an unwillingness to

improve his financial practices and to familiarize himself with the Rules of Professional Conduct as they related to the requirement to safe keep client property. The record evidence also establishes that Respondent's misuse of his trust account was done knowingly based on the fact that he failed to keep adequate records of his trust account activity.

This Court's recent decision of *In re Farris*, 2015 WL 5240375 (September 8, 2015) is on point. In *Farris*, the Court found that Mr. Farris knowingly commingled funds from his trust account with his operating account and failed, *inter alia*, to distribute the funds in his trust account to the rightful owners. *Id.* at \*6. His actions resulted in misappropriation of nearly \$93,000 of his client's funds. *Id.* at \*10. Of significance, during its investigation, the OCDC asked Farris to provide records concerning activity in his trust account. Farris was unable to do so, providing only "tardy and incomplete responses" to the OCDC and claiming that he did not know that improper transfers were made from his trust account. *Id.* at \*8. In addition, in attempting to cover-up his misconduct, the attorney actively deceived his client, the OCDC and this Court. As the *Farris* Court explained, the attorney has the responsibility of proving that he properly managed his trust account and no attorney who has complied with Rule 4-1.15(d) can claim . . . that he "did not know." *Id.* at \*9-10. To allow such a claim would refute the purpose of Rule 4-1.15 and force the OCDC to depend solely on the attorney's testimony. *Id.* Thus, failure to comply with Rule 4-1.15(d) gives rise to an inference of knowledge and the attorney will be deemed to have known of the transactions and transfers taking place within the trust account. *Id.*

In this case, the appropriate analysis of Respondent's failure to produce records requested by the OCDC and to generally cooperate in the OCDC's investigation is similar.

Respondent's violated the Ethics Rules knowingly because he failed to keep sufficient records of the activity in his trust account and because he had been the subject of prior cautions and an admonition from the OCDC regarding his mishandling of his trust account. As opposed to keeping the records required by Rule 4-1.15(d), Respondent relied heavily on assumptions and third party notifications to determine whether an improper transaction in his IOLTA had occurred. For instance, when asked if he knew why he withdrew \$1,500 from his IOLTA account, he replied, "I don't even know that I withdrew \$1,500 . . . I just made an assumption that if I did withdraw it, I withdrew it because I had a fee coming. . . but that's all an assumption." **App. 26.** Similarly, Respondent was asked during his deposition if he understood that the rules require very specific paperwork to indicate the activity in his IOLTA. **App. 55.** Respondent's explanation was that "I really obviously don't understand it or I would have done it." **Id.** Significantly, Respondent stated that he would rely on third parties to notify him if payments should have been made from his IOLTA account but were not received, such as the payment owed to Dr. Brust for the Inekoviches' matter. **App. 103.** Respondent admitted violating the Ethics Rules, but testified that it was "negligence at worse" on his part in not abiding by the Ethics Rules. **App. 99.**

As in *Farris*, Respondent's ignorance of the Ethics Rules is an insufficient defense to his misconduct and there are few aggravating or mitigating circumstances present to warrant a rejection of the OCDC's proposed discipline. In the instant case, Respondent is a long-standing member of the Missouri Bar. **App. 126.** He has practiced law for 54 years, yet was admonished only once for violating the Ethics Rules. **App. 138.** Nonetheless,

probation under Rule 5.225, is not appropriate because Respondent knowingly committed the acts warranting suspension. Although Respondent's actions may not have been done with the specific purpose to cause harm to his clients, they were done with knowledge and such harm to the client did result. For example, the Inekoviches were never made whole because the funds held by Respondent from their settlement should have either been paid to the medical provider, Dr. Brust, or to the clients. Instead, they were used by Respondent for other purposes, including his own personal purpose. In light of these aggravating and mitigating circumstances, the Panel considered Respondent's testimony, the applicable rules and case law, and properly found it appropriate to suspend Respondent's license.

While the case has factual similarities to the *Farris* case and involved some of the same ethical violations, Informant believes that Farris is distinguishable based on the absence in this case of an active intent to deceive the client and the disciplinary authority. Notwithstanding the serious misconduct involved in this case, Informant believes that the public and the bar will be adequately protected by a period of indefinite suspension of Respondent's law license.

Upon consideration of the facts, Respondent's previous disciplinary history, all aggravating and mitigating factors, and the applicable rules and case law, Informant submits that Respondent's law license should be suspended indefinitely, with no leave to apply for reinstatement until after six months.

# **CONCLUSION**

Informant asks the Court: (a) to find that Respondent violated Rule 4-1.15(a)(d)(f) and 4-8.1(c) of the Rules of Professional Conduct; (b) to suspend Respondent's license indefinitely with no leave to apply for reinstatement until after six months; and (c) to tax all costs in this matter to Respondent, including the \$1,000 fee pursuant to Rule 5.19(h).

Respectfully submitted,

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**ATTORNEYS FOR INFORMANT**



**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of October, 2015, the Informant's Brief was sent to Respondent via First Class mail, postage prepaid, to:

Edward Lander  
185 Ladue Pines Drive  
St. Louis, MO 63141

**Respondent**



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Joyce Capshaw

**CERTIFICATION: RULE 84.06(c)**

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 3,130 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



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Joyce Capshaw